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FEDERAL COMMUNICATIONS COMMISSION
U.S. DEPARTMENT OF THE SECRETARY

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

**Establishment of a Public Service Radio
Pool in the Private Mobile Frequencies
Below 800 MHz**

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RM-9405

To: The Commission

**REPLY OF ATLANTIC CITY ELECTRIC COMPANY AND
DELMARVA POWER AND LIGHT COMPANY
TO STATEMENTS REGARDING
PETITION FOR RULEMAKING**

Atlantic City Electric Company (Atlantic) and Delmarva Power and Light Company ("Delmarva"), through their undersigned counsel and pursuant to Section 1.405(b) of the Rules and Regulations of the Federal Communications Commission ("FCC"), 47 C.F.R. §1.405(b), hereby submit this Reply to Statements filed in Support of or in Opposition to the Petition for Rulemaking (Petition) filed with the Commission on August 14, 1998 by UTC, the Telecommunications Association, the American Petroleum Institute, and the Association of American Railroads.¹

INTRODUCTION

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List A B C D E

Atlantic and Delmarva are sister utilities serving customers in the states of New Jersey, Delaware, Maryland and Virginia. Atlantic provides electric power to approximately 465,000

¹ This Petition appeared on a Commission Public Notice dated November 23, 1998, Report No. 2306, mimeo 90739.

customers across its 2,700 square mile service territory, which includes Atlantic City and Southern New Jersey. Delmarva provides electric power and gas to approximately 540,000 customers across 6,700 square miles of service territory in Delaware, Maryland and Virginia, serving most of the Delaware-Maryland-Virginia Peninsula (Peninsula).

Atlantic and Delmarva's service territories are located in low-lying coastal areas prone to hurricanes and other violent weather that can cause large-scale power outages. In order to serve the utilities' mobile communications requirements for the safe and efficient distribution of electricity and natural gas, Atlantic and Delmarva operate private land mobile radio systems licensed in the bands below 800 MHz. These systems are vital communications links between crews in the field and the utilities' headquarters during routine and emergency operations. Atlantic and Delmarva believe that implementation of a Public Service Radio pool is critical for assuring the reliability of these operations in the bands below 800 MHz for the safe and efficient distribution of electricity and natural gas.

Atlantic and Delmarva are thus vitally interested in Commission action on the above-captioned Petition which, if implemented, would provide dedicated spectrum in the bands below 800 MHz for critical mobile communications operations undertaken by electric and natural gas utilities. The Petition would further institute protected service contours for utility operations in the bands below 800 MHz.

DISCUSSION

Establishment of a Public Service Radio pool by the Commission would be in the public interest and would permit the FCC to remedy deficiencies in the current coordination framework

that place critical mobile communications in jeopardy of interference from the operations of other Part 90 eligibles.

Those parties that oppose the Petition generally take the position that all private land mobile radio operations are important, and thus no segment of the private land mobile community is entitled to a spectrum set-aside under the current land mobile regulatory framework. Of course, all private services have some level of importance and associated safety concerns. As has been clearly recognized by Congress, however, mobile communications operations conducted by utilities, pipelines and railroads must be afforded a higher level of protection. Commencement of a rulemaking proceeding to establish a Public Service Radio pool would provide a level of recognition and protection that is appropriate and due these “critical infrastructure industries.”

The Personal Communications Industry Association (PCIA) and the Industrial Telecommunications Association (ITA) note the safety functions served by the mobile radio operations of eligibles in the Industrial/Business pool generally. (Comments of PCIA at p. 11 et seq.; Comments of ITA at ¶¶ 22-25.) Energy utilities such as Atlantic and Delmarva, however, serve a qualitatively different role that underlies virtually every aspect of modern society. Absent electric power, other industrial and business and, indeed, public safety operations simply cannot be performed. Utilities have responsibility for providing electric power to the public at large, which includes hospitals, police and fire departments, and other critical facilities, while simultaneously assuring the safety of their crews working on high voltage distribution lines. While safety is a concern for all Part 90 eligibles, virtually all of them are fundamentally

dependent upon the effectiveness of energy utilities and other critical infrastructure industries in their operations. As such, energy utilities and other critical infrastructure industries have significantly heightened needs for interference free communications.

The existing Part 90 spectrum framework does not sufficiently account for these crucial differences. Currently, energy utilities and other critical infrastructure industries are members of the Industrial/Business category, which also includes private carriers offering Part 20 commercial service in the bands below 800 MHz. Under the current rules as developed by the Commission's Refarming proceeding, energy utilities share access to channels with a wide variety of other Industrial/Business entities whose safety considerations can not reasonably be compared to that of the critical infrastructure industries.

Atlantic and Delmarva favorably note that ITA expressed support in its comments for mandatory protected service contours for the Power, Petroleum and Railroad Services. (ITA Comments at ¶ 30.) In the 450-512 MHz band, these contours would prohibit the 21 dBu contour of a proposed station from interfering with the 39 dBu contour of the incumbent system. As the Petition notes, adopting protected service contours would best protect existing stations in the critical infrastructure industries. As the Petition also observes, however, the creation of a Public Service Radio pool offers the best means of protecting new critical infrastructure facilities that will need to be authorized and constructed in the future.

Atlantic and Delmarva take exception to the American Mobile Telecommunications Association's (AMTA's) position that shared access as between critical infrastructure industries and commercial trunked systems on channels below 800 MHz provides a workable solution to the broad issues raised by the Petition. (AMTA Comments at ¶ 5.) First, due to wide-area

coverage requirements and reliability concerns, use of commercial trunked systems in the bands below 800 MHz is not feasible for energy utilities. Second, the absence of protected service contours for critical infrastructure industries employing standard base-mobile configurations places these stations in particular danger of interference from trunked commercial systems that may be authorized on co-channel or adjacent channel frequencies.

The serious nature of these concerns has been expressed by several members of the U.S. House of Representatives, who have written Chairman Kennard asking that long-term action be implemented to prevent interference to critical utility operations. Adoption of a Notice of Proposed Rule Making seeking the creation of a Public Service Radio pool would be the quickest and most effective way for the Commission to meet this important goal. In this regard, Atlantic and Delmarva note that the Petition itself is quite comprehensive, citing specific frequencies and offering detailed rules for the new pool. It presents a “stand-alone” framework for rapid implementation that the Commission is respectfully urged to adopt.

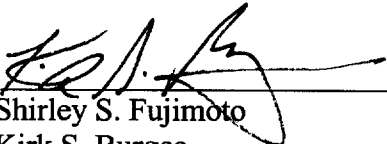
CONCLUSION

Atlantic and Delmarva urge the Commission to reject the arguments of those parties that seek to characterize all private land mobile operations as indistinguishable. The requirements of the critical infrastructure industries for a Public Service Radio pool are compelling and the Commission should expeditiously adopt a Notice of Proposed Rule Making incorporating the proposed rule provisions advanced by the above-captioned Petition.

WHEREFORE, THE PREMISES CONSIDERED, Atlantic and Delmarva request that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

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Dated: January 7, 1999

Certificate of Service

I, Christine S. Bisio, a secretary at the law firm McDermott, Will & Emery, do hereby certify that I have mailed copies of the foregoing Reply in regard to RM-9405 to:

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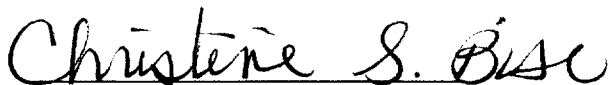
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by first class mail, postage prepaid, this 7th day of January, 1999.


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